

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jaclyn Joseph	Team: Team # 4	CCRB Case #: 200900849	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 01/13/2009 6:42 PM	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 7/13/2010	EO SOL 7/13/2010	
Date/Time CV Reported Tue, 01/13/2009 12:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 01/20/2009 2:44 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. SGT Sean Downes	03978	918975	075 PCT
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Brian Christen	05111	945586	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers entered § 87(2)(b) Brooklyn, NY 11208.	§ 87(2)(b)
B. Officers	Abuse: Officers damaged § 87(2)(b)'s property.	§ 87(2)(b)
C. Officers	Abuse: Officers drew their guns.	§ 87(2)(b)
D.SGT Sean Downes	Abuse: Sgt. Sean Downes refused to provide his name and shield number to § 87(2)(b)	§ 87(2)(b)
E.SGT Sean Downes	Force: Sgt. Sean Downes used physical force against § 87(2)(b)	§ 87(2)(b)
F. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)
G.SGT Sean Downes	Force: Sgt. Sean Downes used physical force against § 87(2)(b)	§ 87(2)(b)
H.SGT Sean Downes	Abuse: Sgt. Sean Downes threatened to arrest § 87(2)(b)	§ 87(2)(b)
I. An officer	Abuse: An officer threatened to arrest § 87(2)(b)	§ 87(2)(b)

Case Summary

§ 87(2)(b) filed a complaint by telephone with IAB on January 13, 2009 (Encl. 5A). The complaint was forwarded by IAB to the CCRB on January 20, 2009 (Encl. 6A-B).

On January 13, 2009, at approximately 6:42 pm, a group of officers entered § 87(2)(b)'s apartment at § 87(2)(b) in Brooklyn in order to pursue § 87(2)(b) for the crime of assault. The following allegations resulted:

- **Allegation A – Abuse of Authority:** Officers entered § 87(2)(b) § 87(2)(g)
- **Allegation B – Abuse of Authority:** Officers damaged § 87(2)(b)'s property. § 87(2)(g)
- **Allegation C – Abuse of Authority:** Officers drew their guns. § 87(2)(g)
- **Allegation D – Abuse of Authority:** Sgt. Sean Downes refused to provide his name and shield number to § 87(2)(b) § 87(2)(g)
- **Allegation E – Force:** Sgt. Sean Downes used physical force against § 87(2)(b) § 87(2)(g)
- **Allegation F – Force:** Officers used physical force against § 87(2)(b) § 87(2)(g)
- **Allegation G – Force:** Sgt. Sean Downes used physical force against § 87(2)(b) § 87(2)(g)
- **Allegation H – Abuse of Authority:** Sgt. Sean Downes threatened to arrest § 87(2)(b) § 87(2)(g)
- **Allegation I – Abuse of Authority:** An officer threatened to arrest § 87(2)(b) § 87(2)(g)

This case was originally assigned to Investigator Jaclyn Joseph. It was reassigned to Investigator Igor Volynets for closure on October 22, 2009.

Results of Investigation

Civilian Statement(s)

Complainant/Victim: § 87(2)(b)

§ 87(2)(b) -old Hispanic male, 5'11" tall, weighing 155 pounds, with black hair and brown eyes.

§ 87(2)(b)

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on February 2, 2009 (Encl. 7A-D). § 87(2)(b)'s apartment is in a private two family house located at § 87(2)(b) in Brooklyn. On January 13, 2009 at approximately 6:42 pm, a female whom § 87(2)(b) identified as § 87(2)(b) (who was subsequently identified through the investigation as § 87(2)(b)) ran upstairs into § 87(2)(b)'s § 87(2)(b) floor apartment. § 87(2)(b) is acquainted with § 87(2)(b) as she used to be the babysitter for his children. § 87(2)(b) had been involved in an argument outside of § 87(2)(b)'s apartment with another female, named "§ 87(2)(b)" (identified through the investigation as § 87(2)(b)) prior to entering § 87(2)(b)'s apartment. § 87(2)(b) did not witness this argument but was later told by police that the officers had pursued § 87(2)(b) for 1.5 blocks before she entered his apartment.

§ 87(2)(b) ran up the stairs in the private house to the second floor. The main door to the private house was unlocked. She entered § 87(2)(b)'s apartment, closed the door behind her and sat on the couch. The apartment door was unlocked when § 87(2)(b) entered. § 87(2)(b) heard § 87(2)(b) run up the stairs and say "they're chasing me."

Two officers, PO1 (white male, 6'1", muscular/athlete, blue and white uniform, blond hair, clean-shaven, identified through the investigation as Sgt. Sean Downe) and PO2 (white male, 5'8", heavyset build, black hair, clean-shaven, identified through the investigation as PO Brian Christen), approached § 87(2)(b)'s apartment door, opened it and entered the apartment. The door was still unlocked. There was no damage to § 87(2)(b)'s apartment door yet the main door to the private house was damaged. The hinge on the door was broken and the door no longer closes completely. § 87(2)(b) did not witness any officers' damage the door and it has not been repaired since the date of the incident. Both officers had their guns drawn when they entered § 87(2)(b)'s apartment. The officers never said that they were police or why they were at § 87(2)(b)'s apartment.

§ 87(2)(b) asked what was going on and was told by Sgt. Downe to mind his own business. Sgt. Downe pushed § 87(2)(b) with an open palm on his chest to move him out of the way. § 87(2)(b) asked Sgt. Downe for his badge number. He said, "Excuse me, what is your name and can I get your badge number?" Sgt. Downe laughed at § 87(2)(b) and did not provide his name or shield number.

When § 87(2)(b) saw the officers in § 87(2)(b)'s apartment she stood up from the couch, put her hands in the air and told the officers she didn't know who they were. Sgt. Downe grabbed § 87(2)(b) on her arm, pulled her into the kitchen and slammed § 87(2)(b) against a wall in the kitchen. The left side of § 87(2)(b)'s face made contact with the wall and she sustained bruising to her face. § 87(2)(b) did not resist arrest in any way. § 87(2)(b) was then placed in handcuffs by Sgt. Downe. There was no conversation between the officers and § 87(2)(b) at this time. § 87(2)(b)'s wife § 87(2)(b) and his friend "§ 87(2)(b)" (identified through the investigation as § 87(2)(b)) witnessed the incident inside § 87(2)(b)'s apartment. § 87(2)(b) was then escorted downstairs by PO Christen and outside of the house.

Sgt. Downe stayed inside § 87(2)(b)'s living room. Sgt. Downe was looking around § 87(2)(b)'s living room by moving his head around. § 87(2)(b) asked what was going on and Sgt. Downe told him it was none of his concern. Sgt. Downe asked § 87(2)(b) who the head of the household was and § 87(2)(b) told him it was him. Sgt. Downe stated that he needed to collect evidence. Sgt. Downe said he saw § 87(2)(b) with a bag that had a sweater inside. The bag was black with gold writing on it and contained a beige sweater with designs on it. The bag was lying on § 87(2)(b)'s living room floor.

§ 87(2)(b) held the sweater, tried to explain to Sgt. Downe that there was only a sweater inside the bag and he wanted to keep the sweater for § 87(2)(b). Sgt. Downe went up to § 87(2)(b) and tried to pull the sweater out of § 87(2)(b)'s hands. Sgt. Downe insisted that the sweater was evidence and he could not keep it. § 87(2)(b) and Sgt. Downe were pulling the sweater back and forth in the doorway of the apartment. They both eventually ended up on the stairs outside of the apartment door, each tugging on the sweater for approximately one minute. § 87(2)(b) told § 87(2)(b) to let go of the sweater and to let Sgt. Downe have it. § 87(2)(b) complied.

§ 87(2)(b) and § 87(2)(b) went outside to see § 87(2)(b) escorted away. § 87(2)(b) then let go of the sweater. § 87(2)(b) had already been placed in a marked RMP while § 87(2)(b) spoke to PO Christen. He was trying to find out information about what was going to happen to § 87(2)(b). § 87(2)(b) was put in handcuffs. Six or seven officers then came from across the street and "bum rushed" § 87(2)(b). One of the officers (male) put his foot across § 87(2)(b)'s feet and tripped him to the ground face first. § 87(2)(b) did not see anything further regarding any interaction between § 87(2)(b) and any officers.

Sgt. Downe approached § 87(2)(b) who was standing at the main door of the house. § 87(2)(b) asked Sgt. Downe how he could help him any further and Sgt. Downe said he needed to go upstairs to speak to his wife, § 87(2)(b) alone. Sgt. Downe then pushed § 87(2)(b) in his chest with an open palm to move him out of the way and went up the stairs toward § 87(2)(b)'s apartment. § 87(2)(b) followed Sgt. Downe up the stairs asking him what he was doing. Sgt. Downe told § 87(2)(b) that if he followed him into the apartment he would be arrested. Sgt. Downe entered the apartment and locked the door behind him. § 87(2)(b) sat at the top of the stairs eavesdropping on the conversation taking place between Sgt. Downe and § 87(2)(b) but could not hear anything. Five officers in plainclothes were inside the house at this time. § 87(2)(b) was told by one of these officers to get off the steps or be arrested. § 87(2)(b) went halfway down the stairs and the same officer instructed him to descend all the way down the stairs.

Attempts to Contact Civilians

The CCRB made several attempts to contact § 87(2)(b) and § 87(2)(b) both of whom are listed as victims in this investigation. On February 2, 2009, § 87(2)(b) appeared at the CCRB with § 87(2)(b) but refused to provide a statement based on the advice of her attorney. Two "please call" letters were sent to the address listed on § 87(2)(b)'s arrest report on March 2, 2009 and March 11, 2009. A search on Whitepages.com did not provide any additional contact information for § 87(2)(b). Two letters were sent to the address listed on § 87(2)(b)'s arrest report on March 2, 2009 and March 11, 2009. A search on Lexis-Nexis confirmed the addresses for § 87(2)(b) and § 87(2)(b) but did not provide any telephone information. To date, the letters have not been returned to the CCRB and neither civilian has contacted the agency to schedule an appointment or confirm an interest in providing a statement in this investigation.

NYPD Statement(s):

Subject Officer: SGT. SEAN DOWNES

- § 87(2)(b) -old white male, 5'0" tall, weighing 220 pounds, with brown hair and green eyes.
- On the date of the incident, Sgt. Downes worked from 11:15 am until 8:12 pm and was assigned to the Field Training Unit. Sgt. Downes was in uniform and working with PO Brian Christen. He was assigned to RMP #1336.

CCRB Testimony

Sgt. Sean Downes was interviewed at the CCRB on May 11, 2009 (Encl. 9A-C). At approximately 6:40 pm on January 13, 2009, Sgt. Downes and PO Christen were doing routine patrol and driving westbound on Atkins Avenue when they observed two individuals, believed to be a male and female, engaged in a physical dispute twenty five feet north of the corner of Atkins Avenue and Pitkin Avenue. The male had the female pinned against a fence and was striking her on her body with a closed fist. Sgt. Downes, the driver of the RMP, drove past the two individuals and made a U-turn on Atkins Avenue. The individuals were still fighting and it appeared that the female was defending herself. The male, who Sgt. Downes later found out was a female (identified as § 87(2)(b)) saw the marked RMP. Sgt. Downes did not recall if the lights and sirens were on. She snatched a bag out of the other female's hand and fled northbound on Pitkin Avenue.

Sgt. Downes stopped the RMP, exited, and pursued § 87(2)(b) on foot. § 87(2)(b) entered the front yard of § 87(2)(b) through an open gate. § 87(2)(b) ran up the stairs and entered the first door that opens up into the vestibule of the house. Sgt. Downes thought he witnessed a robbery. He followed § 87(2)(b) to § 87(2)(b). The house door slammed shut in his face. Sgt. Downes used physical force to open the door and observed § 87(2)(b) standing in the vestibule area of the house. Sgt. Downes hit the door with his shoulder and foot to force the door open. The lock on the door was damaged. § 87(2)(b) saw Sgt. Downes and continued to flee. Sgt. Downes told § 87(2)(b) to stop running. She did not comply and ran up a flight of stairs and into the § 87(2)(b) floor apartment of the building. Sgt. Downes followed her up the stairs and the door to the § 87(2)(b) floor apartment was slammed shut in his face. Sgt. Downes forced the door open with his shoulder and gained entry inside the apartment. He did not recall if the door was locked. He observed approximately six to eight people in the living room and foyer of the apartment. The civilians were screaming and grabbing Sgt. Downes. They refused to follow Sgt. Downes' instructions. He did not recall what his instructions were. Sgt. Downes observed § 87(2)(b) standing in the rear of the apartment. The other people in the apartment were combative and would not let Sgt. Downes near her. Sgt. Downes feared that his weapon would be dislodged from his holster because the others in the apartment were grabbing him and not letting him approach § 87(2)(b). He secured his weapon by placing one hand over it and walked backwards toward the front door of the apartment. At some point while he was inside the apartment Sgt. Downes called for assistance to the incident location over his radio. He did not recall when, in the sequence of events, he made the call.

PO Christen arrived at the apartment some time later. Sgt. Downes explained to him that § 87(2)(b) was inside. Other officers arrived at the incident location after PO Christen. Sgt. Downes and the officers arrested § 87(2)(b). Sgt. Downes did not recall who handcuffed her or who escorted her out of the building. At no time was § 87(2)(b) dragged down the staircase. Officers arrested the female that § 87(2)(b) was fighting with on the street (§ 87(2)(b)). Sgt. Downes subsequently found out that § 87(2)(b) and § 87(2)(b) were girlfriends and had been

involved in a domestic dispute. Domestic incident reports were filled out after the females were apprehended. A male that was inside the apartment § 87(2)(b) was also arrested.

Sgt. Downes went back upstairs into the apartment and spoke to § 87(2)(b) the owner, about the incident. § 87(2)(b) stated to Sgt. Downes that the people inside her apartment did not live there and did not belong there. Sgt. Downes told § 87(2)(b) that he would prepare an accident report for the damage to her doors. § 87(2)(b) refused to have an accident report filled out and stated she would fix the doors on her own. Sgt. Downes told her that he had to prepare the report. Sgt. Downes asked § 87(2)(b) if the § 87(2)(b) lived there and § 87(2)(b) stated she did not live there but that she knew who § 87(2)(b) was. No other civilians at the incident location indicated to Sgt. Downes that they owned the apartment. Sgt. Downes did not recall interacting with anyone named § 87(2)(b)

Sgt. Downes did not recall if he drew his gun at any time during the incident. On the date of incident he was carrying a silver gun in his holster. At no time during the incident did anyone ask Sgt. Downes for his name or shield number. Sgt. Downes stated that if someone had asked him for his name and shield number he would not have been able to hear it because everyone in the apartment was yelling and talking over each other. He also stated that if he heard someone ask him for his name and shield number he would provide it when the incident scene was safe and secured.

Sgt. Downes did not recall if he moved anyone out of the way by pushing them in the chest with an open palm. He did not observe any officer do this during the incident.

Sgt. Downes did not recall threatening anyone with arrest. Sgt. Downes stated that if anyone didn't comply with directions to get off of the stairs they could have been arrested. He did not hear any other officers at the incident location tell anyone that they could be arrested.

Witness Officer: PO BRIAN CHRISTEN

- § 87(2)(b) -old white male, 5'7" tall, weighing 190 pounds, with brown hair and brown eyes.
- On the date of the incident, PO Christen worked from 11:30 am until 8:05 pm. He was the sergeant's operator and worked with Sgt. Sean Downes. PO Christen was in uniform and assigned to marked RMP #1336.

CCRB Testimony

PO Brian Christen was interviewed at the CCRB on April 27, 2009 (Encl. 13A-C). § 87(2)(g)

There were approximately four individuals in the living room of the apartment when PO Christen and Sgt. Downes entered in pursuit of § 87(2)(b). PO Christen did not have any conversation with anyone inside the apartment and none of the civilians intervened. PO Christen apprehended § 87(2)(b) in the living room of the apartment. § 87(2)(b) did not enter any other rooms in the apartment. § 87(2)(b) did not resist and complied with PO Christen. PO Christen escorted § 87(2)(b) downstairs and outside of the house. § 87(2)(b) walked down the stairs willingly with PO Christen and was cooperative. PO Christen stated that § 87(2)(b) is the owner of the apartment. After PO Christen handcuffed § 87(2)(b) and brought her to the vehicle, an unidentified male § 87(2)(b) tried to separate PO Christen from the female in front of the RMP. § 87(2)(b) physically tried to push PO Christen and § 87(2)(b) apart. § 87(2)(b) was yelling and wanted to know what was going on. PO Christen told § 87(2)(b) to stand on the

sidewalk and that he would explain what happened after he placed § 87(2)(b) in the RMP. § 87(2)(b) refused to listen to PO Christen and was handcuffed by an unidentified officer. § 87(2)(b) was arrested for § 87(2)(b). PO Christen went back upstairs and explained the situation to § 87(2)(b). § 87(2)(b) was cooperative and did not cause any problems.

PO Christen did not have his gun drawn at any time during the incident and did not recall if Sgt. Downes had his gun drawn. At no time during the incident did PO Christen push § 87(2)(b) or any other civilians in the chest to move them out of the way and did not observe any other officer perform this act. PO Christen did not hear § 87(2)(b) ask any officers for their identifying information. At no time did PO Christen threaten to arrest § 87(2)(b). PO Christen did not hear any other officer threaten to arrest § 87(2)(b). At no time during the incident did § 87(2)(b) do anything that he could have been arrested for.

NYPD Document(s)

Complaint Report (UF 61)

According to the narrative listed on the complaint report prepared in connection to this incident, § 87(2)(b) slapped and punched § 87(2)(b) in the head on a public sidewalk. § 87(2)(b) subsequently refused a lawful order by the police to stop and refused to be handcuffed by flailing her arms and legs (Encl. 11A-B).

Summons/Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of December 29, 2009 with regard to the incident.

Civilian(s) Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]

Civilian(s) CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) and the first complaint involving § 87(2)(b) and § 87(2)(b) (Encl. 4A-C).

Subject Officer(s) CCRB History

- Sgt. Sean Downes has been a member of the service for twelve years and there are four substantiated CCRB allegations against him. In CCRB # 200600024, Sgt. Downes was substantiated on the abuse of authority allegations of a stop-and-question, an entry, a frisk, and a search. These substantiations are pending at the NYPD (Encl. 3A-B).

Conclusion

Identification of Subject Officer(s)

- § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
- Sgt. Downes matches the description of the subject officer provided by § 87(2)(b) [REDACTED]. Additionally, Sgt. Downes confirmed his presence during the incident § 87(2)(g) [REDACTED]
[REDACTED]

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: Officers entered § 87(2)(b) [REDACTED]
[REDACTED]

Allegation B – Officers damaged § 87(2)(b) [REDACTED] **s property.**

It is undisputed that several officers entered § 87(2)(b) [REDACTED] s apartment and slightly damaged the front door of the apartment in the process. § 87(2)(g) [REDACTED]
[REDACTED]

[REDACTED] Under the exception known as exigent circumstances, officers may make a warrantless entry into a suspect’s home “where certain urgent events occur that do not provide the police with sufficient time to obtain an arrest warrant” (Encl. 2A-C). Kamins, New York Search & Seizure, p. 327-329 (2008 ed.). This exception is justified under the theory of public safety that a violent crime has occurred, a dangerous perpetrator has fled into a known location and there is a danger that (s)he might escape. Kamins, p. 329. Sgt. Downe and PO Christen pursued § 87(2)(b) [REDACTED] as she fled to § 87(2)(b) [REDACTED] s apartment and slammed the door shut after assaulting § 87(2)(b) [REDACTED] on a public sidewalk. § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation C – Officers drew their guns.

According to relevant legal protocol, an officer can draw his gun and point it at another person if he has reasonable fear for his or someone else’s safety (Encl. 1A-E). NYPD v. Gliner, OATH Index 955/00 (2000). § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation D – Abuse of Authority: Sgt. Sean Downes refused to provide his name and shield number to § 87(2)(b) [REDACTED]

§ 87(2)(g) [redacted]
[redacted] Sgt. Downes testified that he either did not hear the request because of the loud noise inside the premises or that such a request was not made. § 87(2)(g) [redacted]
[redacted]
[redacted]
[redacted]

Allegation E – Force: Sgt. Sean Downes used physical force against § 87(2)(b) [redacted]

Allegation F – Force: Officers used physical force against § 87(2)(b) [redacted]

§ 87(2)(g) [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

Allegation G – Force: Sgt. Sean Downes used physical force against § 87(2)(b) [redacted]

§ 87(2)(g) [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

Allegation H – Abuse of Authority: Sgt. Sean Downes threatened to arrest § 87(2)(b) [redacted]

Allegation I – Abuse of Authority: An officer threatened to arrest § 87(2)(b) [redacted]

§ 87(2)(g) [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

Team: _____

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Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____

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Date